IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 754 of 1993

Date of decision : September 11, 2007.

Mohinder Singh and others

... Petitioners

versus

State of Punjab

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Bipan Ghai, Advocate
for the petitioners.

Mr. Anter Singh Brar, DAG, Punjab
for the respondent.

A.N. Jindal, J

The petitioners-accused Mohinder Singh, Devinder Singh and Randhir Singh (hereinafter referred to as 'the petitioners') have called in question the judgment dated 8.11.1993 passed by the learned Additional Sessions Judge, Ludhiana, accepting the appeal qua Hardial Singh, whereas dismissing their appeal against the judgment dated 8.5.1992 passed by the Judicial Magistrate Ist Class, Ludhiana, convicting the accused under Sections 323/325/326 read with Section 34 IPC and sentencing them accordingly.

The prosecution story in brief is that on 14.11.1988, Mohinder Singh armed with gandasi, Devinder Singh, Hardial Singh and Randhir Singh armed with lathi came. Hardial Singh exhorted to teach them a lesson for making false allegations of theft of fan. Mohinder Singh petitioner inflicted two gandasi blows on the head of Gurnam Singh and Hardial

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Singh inflicted dang blow on his left arm. When the complainant Ajaib Singh and his nephew Jaswant Singh tried to save them, then Randhir Singh inflicted dang blow on his right thigh and Devinder Singh petitioner inflicted a dang blow on his left thigh and left shoulder, and fled away.

The case was registered; investigated and resulted into a report under Section 173 Cr.P.C. against the petitioners.

Consequently, they were tried, convicted and sentenced accordingly.

In appeal, while acquitting accused Hardial Singh, the remaining accused were convicted. Hence this revision petition.

I have heard Mr. Bipan Ghai, learned counsel for the petitioners, Mr. Anter Singh Brar, learned Deputy Advocate General, Punjab and perused the records with their able assistance.

The story of the prosecution has not been assailed by the learned counsel for the petitioners. However, it has been urged that grievous injuries are attributed to Mohinder Singh, which are stated to have been inflicted on the head of Gurnam Singh. Hardial Singh in furtherance of common intention, caused injuries to Gurnam Singh, whereas Randhir Singh and Devinder Singh had not inflicted any injury to Gurnam Singh. They are stated to have caused injuries to Ajaib Singh, which according to the doctor were declared as simple. Had they any intention to cause injuries to Gurnam Singh, then they would have also participated in the first phase, therefore, they cannot be said to have common intention to cause injuries to Gurnam Singh. The offence, if any, committed by them falls within the purview of Section 323 IPC.

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Having given my thoughtful consideration to the aforesaid contentions, I find some substance in the same. The prosecution version which has been coming forth from the statements of Ajaib Singh (PW2) and Gurnam Singh (PW3) are quite consistent and fit in with the medical evidence. Both the Courts below have given a concurrent findings with regard to the participation of all the four petitioners in the commission of the crime. Equally good is the other argument advanced by the learned counsel for the petitioners that all the petitioners were present but at the time when the injuries were caused to Gurnam Singh, in the first phase, Devinder Singh and Randhir Singh did not come forward to cause injuries to him, even after he fell down. It was only when Ajaib Singh came forward to rescue Gurnam Singh, Devinder Singh and Randhir Singh caused simple injuries to him that too on the non vital parts of his body. As per Dr. Kiran Chopra (PW1), three injuries suffered by Ajaib Singh were simple in nature. Had they any common intention with Hardial Singh and Mohinder Singh, then they certainly would have caused the injuries to Gurnam Singh.

Without going deep into the merits regarding the injuries attributed to Randhir Singh and Devinder Singh, because of the concurrent findings of the two Courts below, it would be suffice to say that Randhir Singh and Devinder Singh did not appear to have shared the common intention with Mohinder Singh, therefore, the injuries on the person of Ajaib Singh being simple in nature, both Devinder Singh and Randhir Singh could be said to have committed an offence under Section 323 IPC. Hardial Singh accused has already been acquitted by the Appellate Court.

For the foregoing reasons, I hereby partly accept the petition,

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set aside the impugned judgment, while dismissing the petition qua Mohinder Singh, convert the conviction of Devinder Singh and Randhir Singh under Section 323 IPC.

Now coming to quantum of sentence, since both the accused caused only one injury each to Ajaib Singh; they have already suffered a lot of agony of the proceedings and no past bad antecedents have been brought on record so as to deny them the benefit of probation under Section 4 (1) of Probation of Offenders Act, 1958, therefore, the relief is extended to Devinder Singh and Randhir Singh under the aforesaid provisions.

In view of the circumstances explained above, Devinder Singh and Randhir Singh petitioners are, therefore, ordered to be released on probation for a period of one year, on furnishing personal bond in the sum of Rs.10,000/- with one surety of the like amount each under Section 4(1) of the Probation of Offenders Act, 1958. They are directed to keep peace and be of good behaviour during this period.

However, the petition qua Mohinder Singh is dismissed. The petitioners namely Devinder Singh and Randhir Singh are further directed to pay Rs.10,000/- each to both the injured on account of compensation which will be received by them equally.

September 11, 2007 **(A.N. Jindal)**
'deepak' **Judge**

To be referred to Reporter : Yes/No.